

KENJI M. PRICE #10523
United States Attorney
District of Hawaii

SYDNEY SPECTOR #11232
Assistant U.S. Attorney
Room 6-100, PJKK Federal Bldg.
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-3752
Email: Sydney.Spector@usdoj.gov

Attorneys for Defendant
RYAN D. MCCARTHY
Secretary of the United States Army

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SHERYLYNN STRONG,

Plaintiff,

v.

RYAN D. MCCARTHY, Secretary of
the United States Army; and DOES 1-
10, Inclusive,

Defendants.

CIVIL NO. 20-00132 LEK-KJM

DEFENDANT'S MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT [ECF No.
18]; MEMORANDUM IN SUPPORT
OF DEFENDANT'S MOTION TO
DISMISS FIRST AMENDED
COMPLAINT [ECF NO. 18];
DECLARATION OF MAJOR
MICHAEL S. SIEGERT; EXHIBITS
"A" – "C"; CERTIFICATE OF
SERVICE

DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S AMENDED COMPLAINT (ECF NO. 18)

Defendant Ryan McCarthy, Secretary of the Army, by and through the undersigned attorneys, respectfully moves for dismissal of the Amended Complaint (ECF No. 18). Plaintiff fails to show real and immediate threat of future harm, as required for a declaratory and injunctive relief. Further, Plaintiff's claim for violation of Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 1116 is barred by sovereign immunity.

This Motion is brought pursuant to Federal Rule of Civil Procedure 7 and 12(b)(1) and Local Rule 7 and 10.2, and is based upon the attached memorandum and pleadings herein.

This Motion is made following the conference of counsel pursuant to L.R. 7.8, which took place on November 6, 2020.

Dated: November 16, 2020, at Honolulu, Hawaii.

KENJI M. PRICE
United States Attorney
District of Hawaii

/s/ Sydney Spector
By _____
SYDNEY SPECTOR
Assistant U.S. Attorney

Attorneys for Defendant
RYAN MCCARTHY,
SECRETARY OF THE ARMY

CERTIFICATE OF SERVICE

I hereby certify that, on the date and by the method of service noted below, a true and correct copy of the foregoing document was served on the following at their last known address:

Served Electronically through CM/ECF:

JEFFREY S. PORTNOY, ESQ.
1000 Bishop Street, Suite 1200
Honolulu, HI 96813-4212

jportnoy@cades.com

JONATHAN D. MILLER, ESQ.
(Pro Hac Vice)
NYE, STIRLING, HALE & MILLER, LLP
33 West Mission Street, Suite 201
Santa Barbara, CA 93101

jonathan@nshmlaw.com

Attorneys for Plaintiff

DATED: November 16, 2020, at Honolulu, Hawaii.

/s/ Lynden Shigezawa

U.S. Attorney's Office
District of Hawaii